

### **REMARKS**

Applicants respectfully request entry of the following amendments and remarks in response to the Final Office Action mailed February 18, 2009. Applicants respectfully submit that the amendments and remarks contained herein place the instant application in condition for allowance.

Upon entry of the amendments in this response, claims 1, 2, 10, 11, 18 – 20, and 25 – 27 are pending. In particular, Applicants amend claims 26 – 27. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

#### **I. Examiner Interview**

Applicants first wish to express their sincere appreciation for the time that Examiner Lai spent with Applicants' Attorney, Anthony Bonner, during a telephone discussion on April 27, 2009 regarding the outstanding Office Action. During that conversation, Examiner Lai and Mr. Bonner discussed potential the rejection of claim 1 with regard to the *Malik* provisional. More specifically, Mr. Bonner indicated that the Office Action relies on the *Malik* provisional to reject the pending claims, but has failed to provide any reasoning or evidence to establish the validity of this rejection. Examiner Lai suggested Applicants include these arguments in this response. Thus, Applicants respectfully request that Examiner Lai carefully consider this response and the amendments.

#### **II. Rejections Under 35 U.S.C. §101**

The Office Action indicates that claims 26 and 27 stand rejected under 35 U.S.C. §101 because the claimed invention is allegedly directed to non-statutory subject matter. Applicants traverse these rejections but amend claims 26 and 27, as indicated above. Applicants submit

that these amendments comply with the Office Action request and that claims 26 and 27, as amended, fulfill all the requirements of 35 U.S.C. §101.

### III. Rejections Under 35 U.S.C. §102

#### A. Claim 1 is Allowable Over *Malik*

The Office Action indicates that claim 1 stands rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Publication Number 2004/0078445 ("*Malik*"). Applicants respectfully traverse this rejection. More specifically, the Office Action argues "[t]he applied reference [*Malik*] has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e)" (OA page 5, element 17). Applicants respectfully disagree with this rejection. First, as previously established, *Malik* by itself is not prior art for at least the reason that *Malik* was filed the same day as the present application. Accordingly, it appears the Office Action is relying on the filing date of the provisional application to *Malik*.

Second, the Office Action has failed to provide evidence or reasoning to validate the position that the *Malik* provisional discloses the elements of claim 1. More specifically, as cited by the Office Action, MPEP §2136.03 clearly states "[t]he 35 U.S.C. 102(e) critical reference date of a U.S. patent or U.S. application publications and certain international application publications entitled to the benefit of the filing date of a provisional application under 35 U.S.C. 119(e) is the filing date of the provisional application with certain exceptions if the provisional application(s) properly supports the subject matter relied upon to make the rejection in compliance with 35 U.S.C. 112, first paragraph" (emphasis added). As illustrated in this passage, the examiner must show that a provisional fulfills the requirements of 35 U.S.C. §112, first paragraph with regard to the elements of claim 1 before any such rejection is valid. For at

least the reason that the Office Action has failed to provide anything to support this position, the Office Action is deficient and claim 1 should be allowed.

**B. Claim 10 is Allowable Over Malik**

The Office Action indicates that claim 10 stands rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Publication Number 2004/0078445 ("*Malik*"). Applicants respectfully traverse this rejection. More specifically, the Office Action argues "[t]he applied reference [*Malik*] has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C 102(e)" (OA page 5, element 17). Applicants respectfully disagree with this rejection. First, as previously established, *Malik* by itself is not prior art for at least the reason that *Malik* was filed the same day as the present application. Accordingly, it appears the Office Action is relying on the filing date of the provisional application to *Malik*.

Second, the Office Action has failed to provide evidence or reasoning to validate the position that the *Malik* provisional discloses any of the elements of claim 10 to justify this conclusion. More specifically, as cited by the Office Action, MPEP §2136.03 clearly states "[t]he 35 U.S.C. 102(e) critical reference date of a U.S. patent or U.S. application publications and certain international application publications entitled to the benefit of the filing date of a provisional application under 35 U.S.C. 119(e) is the filing date of the provisional application with certain exceptions if the provisional application(s) properly supports the subject matter relied upon to make the rejection in compliance with 35 U.S.C. 112, first paragraph" (emphasis added). As illustrated in this passage, the examiner must show that a provisional fulfills the requirements of 35 U.S.C. §112, first paragraph with regard to the elements of claim 10 before any such rejection is valid. For at least the reason that the Office Action has failed to provide anything to support this position, the Office Action is deficient and claim 10 should be allowed.

**C. Claim 18 is Allowable Over *Malik***

The Office Action indicates that claim 18 stands rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Publication Number 2004/0078445 ("*Malik*"). Applicants respectfully traverse this rejection. More specifically, the Office Action argues "[t]he applied reference [*Malik*] has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e)" (OA page 5, element 17). Applicants respectfully disagree with this rejection. First, as previously established, *Malik* by itself is not prior art for at least the reason that *Malik* was filed the same day as the present application. Accordingly, it appears the Office Action is relying on the filing date of the provisional application to *Malik*.

Second, the Office Action has failed to provide evidence or reasoning to validate the position that the *Malik* provisional discloses any of the elements of claim 18 to justify this conclusion. More specifically, as cited by the Office Action, MPEP §2136.03 clearly states "[t]he 35 U.S.C. 102(e) critical reference date of a U.S. patent or U.S. application publications and certain international application publications entitled to the benefit of the filing date of a provisional application under 35 U.S.C. 119(e) is the filing date of the provisional application with certain exceptions if the provisional application(s) properly supports the subject matter relied upon to make the rejection in compliance with 35 U.S.C. 112, first paragraph" (emphasis added). As illustrated in this passage, the examiner must show that a provisional fulfills the requirements of 35 U.S.C. §112, first paragraph with regard to the elements of claim 18 before any such rejection is valid. For at least the reason that the Office Action has failed to provide anything to support this position, the Office Action is deficient and claim 18 should be allowed.

**D. Claim 19 is Allowable Over Malik**

The Office Action indicates that claim 19 stands rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Publication Number 2004/0078445 ("*Malik*"). Applicants respectfully traverse this rejection. More specifically, the Office Action argues "[t]he applied reference [*Malik*] has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C 102(e)" (OA page 5, element 17). Applicants respectfully disagree with this rejection. First, as previously established, *Malik* by itself is not prior art for at least the reason that *Malik* was filed the same day as the present application. Accordingly, it appears the Office Action is relying on the filing date of the provisional application to *Malik*.

Second, the Office Action has failed to provide evidence or reasoning to validate the position that the *Malik* provisional discloses any of the elements of claim 19 to justify this conclusion. More specifically, as cited by the Office Action, MPEP §2136.03 clearly states "[t]he 35 U.S.C. 102(e) critical reference date of a U.S. patent or U.S. application publications and certain international application publications entitled to the benefit of the filing date of a provisional application under 35 U.S.C. 119(e) is the filing date of the provisional application with certain exceptions if the provisional application(s) properly supports the subject matter relied upon to make the rejection in compliance with 35 U.S.C. 112, first paragraph" (emphasis added). As illustrated in this passage, the examiner must show that a provisional fulfills the requirements of 35 U.S.C. §112, first paragraph with regard to the elements of claim 19 before any such rejection is valid. For at least the reason that the Office Action has failed to provide anything to support this position, the Office Action is deficient and claim 19 should be allowed.

**E. Claim 25 is Allowable Over Malik**

The Office Action indicates that claim 25 stands rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Publication Number 2004/0078445 ("*Malik*"). Applicants respectfully traverse this rejection. More specifically, the Office Action argues "[t]he applied reference [*Malik*] has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C 102(e)" (OA page 5, element 17). Applicants respectfully disagree with this rejection. First, as previously established, *Malik* by itself is not prior art for at least the reason that *Malik* was filed the same day as the present application. Accordingly, it appears the Office Action is relying on the filing date of the provisional application to *Malik*.

Second, the Office Action has failed to provide evidence or reasoning to validate the position that the *Malik* provisional discloses any of the elements of claim 25 to justify this conclusion. More specifically, as cited by the Office Action, MPEP §2136.03 clearly states "[t]he 35 U.S.C. 102(e) critical reference date of a U.S. patent or U.S. application publications and certain international application publications entitled to the benefit of the filing date of a provisional application under 35 U.S.C. 119(e) is the filing date of the provisional application with certain exceptions if the provisional application(s) properly supports the subject matter relied upon to make the rejection in compliance with 35 U.S.C. 112, first paragraph" (emphasis added). As illustrated in this passage, the examiner must show that a provisional fulfills the requirements of 35 U.S.C. §112, first paragraph with regard to the elements of claim 25 before any such rejection is valid. For at least the reason that the Office Action has failed to provide anything to support this position, the Office Action is deficient and claim 25 should be allowed.

**F. Claim 26 is Allowable Over *Malik***

The Office Action indicates that claim 26 stands rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Publication Number 2004/0078445 ("*Malik*"). Applicants respectfully traverse this rejection. More specifically, the Office Action argues "[t]he applied reference [*Malik*] has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C 102(e)" (OA page 5, element 17). Applicants respectfully disagree with this rejection. First, as previously established, *Malik* by itself is not prior art for at least the reason that *Malik* was filed the same day as the present application. Accordingly, it appears the Office Action is relying on the filing date of the provisional application to *Malik*.

Second, the Office Action has failed to provide evidence or reasoning to validate the position that the *Malik* provisional discloses any of the elements of claim 26 to justify this conclusion. More specifically, as cited by the Office Action, MPEP §2136.03 clearly states "[t]he 35 U.S.C. 102(e) critical reference date of a U.S. patent or U.S. application publications and certain international application publications entitled to the benefit of the filing date of a provisional application under 35 U.S.C. 119(e) is the filing date of the provisional application with certain exceptions if the provisional application(s) properly supports the subject matter relied upon to make the rejection in compliance with 35 U.S.C. 112, first paragraph" (emphasis added). As illustrated in this passage, the examiner must show that a provisional fulfills the requirements of 35 U.S.C. §112, first paragraph with regard to the elements of claim 26 before any such rejection is valid. For at least the reason that the Office Action has failed to provide anything to support this position, the Office Action is deficient and claim 26 should be allowed.

**G. Claims 2, 11, 20, and 27 are Allowable Over *Malik***

The Office Action indicates that claims 2, 11, 20, and 27 stand rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Publication Number 2004/0078445 ("*Malik*"). Applicants respectfully traverse this rejection for at least the reasons provided for claims 1, 10, 18 – 19, and 25 – 26. Additionally, dependent claim 2 is believed to be allowable for at least the reason that this claim depends from and includes the elements of allowable independent claim 1. Dependent claim 11 is believed to be allowable for at least the reason that this claim depends from and includes the elements of allowable independent claim 10. Dependent claim 20 is believed to be allowable for at least the reason that this claim depends from and includes the elements of allowable independent claim 19. Further, dependent claim 27 is believed to be allowable for at least the reason that this claim depends from and includes the elements of allowable independent claim 26. *In re Fine, Minnesota Mining and Mfg. Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002).



**CONCLUSION**

In light of the foregoing amendments and for at least the reasons set forth above, all objections and/or rejections have been traversed, rendered moot, and/or addressed, and that the now pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested.

Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and Official Notice, or statements interpreted similarly, should not be considered well-known for the particular and specific reasons that the claimed combinations are too complex to support such conclusions and because the Office Action does not include specific findings predicated on sound technical and scientific reasoning to support such conclusions.

If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,

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